

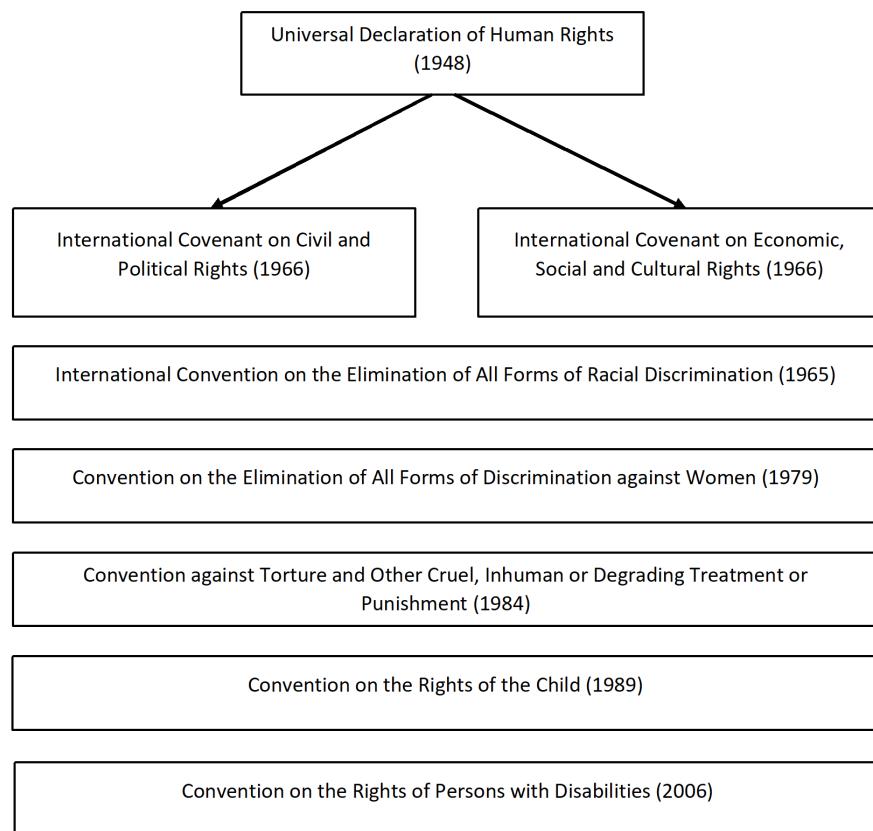
# Where human rights comes from: for ombudsman schemes

There are three layers of human rights protection in the UK – at international, regional and domestic levels, comprising four main sources:

- United Nations
- Council of Europe
- European Union
- UK Human Rights Act 1998

You can read more about [what human rights are](#) and where they come from in the [human rights](#) area of our website.

International human rights treaties ratified by the UK



Treaty name	Examining body
<a href="#"><u>International Covenant on Civil and Political Rights</u></a>	Human Rights Committee
<a href="#"><u>International Covenant on Economic, Social and Cultural Rights</u></a>	Committee on Economic, Social and Cultural Rights
<a href="#"><u>Convention on the Elimination of All Forms of Racial Discrimination</u></a>	Committee on the Elimination of Racial Discrimination
<a href="#"><u>Convention on the Elimination of All Forms of Discrimination against Women</u></a>	Committee on the Elimination of Discrimination against Women
<a href="#"><u>Convention on the Rights of the Child</u></a>	Committee on the Rights of the Child
<a href="#"><u>Convention on the Rights of Persons with Disabilities</u></a>	Committee on the Rights of Persons with Disabilities

<a href="#"><u>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</u></a>	Committee against Torture
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## Council of Europe core conventions and committees ratified by the UK

Convention	Examining or interpreting body
<a href="#"><u>European Convention on Human Rights</u></a>	European Court of Human Rights
<a href="#"><u>European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</u></a>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<a href="#"><u>Framework Convention for the Protection of National Minorities</u></a>	Advisory Committee
<a href="#"><u>Convention on Regional and Minority Languages</u></a>	Committee of Experts
<a href="#"><u>European Social Charter (1961)</u></a>	Committee on Social Rights

## United Nations human rights law

[International human rights law](#) stems from the [Universal Declaration of Human Rights](#), which was adopted by the United Nations (UN) in 1948 after the horrors of the Second World War.

The UK has signed and ratified up to seven UN human rights treaties, which you can find out more about on our [monitoring and promoting UN treaties](#) page. Although the rights contained in these treaties are not directly legally enforceable in UK courts, they do represent binding obligations in international law.

### Monitoring compliance

Expert committees monitor compliance with each UN treaty. They examine reports from states who have signed up to and ratified the treaties (state parties), called state party reports, and 'shadow reports' from non-governmental organisations and

from National Human Rights Institutions, such as the Equality and Human Rights Commission.

Each committee meets approximately every five years and publishes its concluding observations. These set out how well the committee thinks a country has met its international human rights obligations and sets out recommendations on what improvements should be made. The committees also publish general comments which provide a detailed, authoritative interpretation of the nature of each right and states' obligations. They are fundamental to the legal understanding of these rights.

#### [Individual complaints](#)

Some human rights treaties allow individuals to complain directly to a committee if they believe their rights have been violated. An individual must exhaust all domestic channels before petitioning the examining committee.

Individuals only have a right to complain directly to a UN committee if the UK has ratified the relevant provision in the treaty or additional treaty, called an Optional Protocol. The UK has accepted the complaints mechanism under two treaties:

- [Convention on the Elimination of All Forms of Discrimination against Women](#)
- [Convention on the Rights of Persons with Disabilities](#)

This means individuals who have complaints under these two treaties and who have exhausted all domestic remedies can petition the examining body for those treaties. However, rulings involving petitions in other countries give important guidance on how every nation should protect human rights, which you can search for on each committee's webpage. You can find out more about procedures for individual complaints from the [Office of the UN High Commissioner for Human Rights FAQ](#) page.

Concluding observations, general comments and rulings in individual complaints give authoritative interpretations of how states must protect, respect and fulfil their human rights obligations.

#### [Special Rapporteurs](#)

The UN Human Rights Council appoints Special Rapporteurs, who are experts tasked with monitoring, examining and commenting on compliance for a particular right.

Special Rapporteurs produce reports on key thematic human rights issues drawing from evidence across a range of country contexts. They also produce reports on human rights issues in particular countries by visiting the country and meeting with a wide range of groups and individuals, including government ministers, civil society groups, independent specialists and its National Human Rights Institutions. They issue reports outlining their concerns or praise for how the country is upholding that particular human right.

#### Soft law: non-treaty instruments

The UN has developed and adopted a number of 'non-treaty instruments', such as declarations, codes, rules, and principles.

As they are not legally binding, they are sometimes known as 'soft law'. However, they still carry considerable weight and are an important resource for ombudsmen, as they help to clarify legally binding standards.

Those most relevant to ombudsman schemes are:

- [Standard Minimum Rules for the Treatment of Prisoners](#)
- [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#)
- [Standard Minimum Rules for the Administration of Juvenile Justice](#)
- [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#)
- [Declaration on the Elimination of Violence Against Women](#)
- [Principles for Older Persons](#)
- [Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care](#)
- [Guiding Principles on Business and Human Rights](#)
- [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(the Bangkok Rules\)](#)

#### Council of Europe treaties

The Council of Europe was formed in 1949, consists of 47 member states, and is a separate entity to the European Union.

Five Council of Europe treaties, ratified by the UK, are particularly significant for ombudsman schemes:

- [European Convention on Human Rights](#) (ECHR)
- [European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#)
- [Framework Convention for the Protection of National Minorities](#)
- [European Charter for Regional or Minority Languages](#)
- [European Social Charter \(1961\)](#)

#### [European Convention on Human Rights](#)

All member states in the Council of Europe, including the UK, are signatories of the [European Convention on Human Rights](#) (ECHR), which first came into force in 1953. Its rights and guarantees are interpreted and protected by the European Court of Human Rights.

The ECHR was incorporated into UK domestic law under the Human Rights Act 1998, enabling people to bring human rights claims in the UK. When someone has exhausted domestic remedies under the Human Rights Act, they can take their case to the European Court of Human Rights.

The Court can order member states to take remedial action if they have breached rights and pay compensation. Its judgments are important in guiding the work of ombudsman schemes.

#### [European Convention for the Prevention of Torture](#)

The European Committee for the Prevention of Torture (CPT) monitors compliance on the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Provided it notifies a member state of its intention to visit, the CPT has unlimited access to any place of detention, including prisons, immigration centres, residential homes and mental health facilities.

It reports back to the state in confidence and only publishes its findings with the country's permission. The UK has never refused this permission.

Ombudsman schemes that deal with complaints from people deprived of their liberty can gain an understanding of appropriate treatment from the [CPT's published Standards](#).

Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages

These treaties aim to protect the rights of national minorities, combat discrimination, promote equality and preserve and develop their culture, languages and identity. State parties can define what is meant by a national minority in their territories. In the UK, the Scots, Welsh, Irish and Cornish and associated Celtic languages have national minority status under the treaties.

The Advisory Committee and the Committee of Experts, comprised of independent experts, monitor the two treaties respectively. They receive periodic reports from, and sometimes meet with, member state representatives, civil society groups and National Human Rights Institutions, and issue observations and recommendations about each country based on their findings.

The Advisory Committee and Committee of Experts send their findings to the Committee of Ministers (made up of the ministers of foreign affairs of member states). The Committee of Ministers may in turn make recommendations to the state concerned.

#### [European Social Charter \(1961\)](#)

The European Social Charter covers economic and social rights as a counterpart to the ECHR, with a few exceptions, such as the right to education. It guarantees rights including the right to work, the right to organise, the right to bargain collectively and the right to social security.

It is monitored by the Committee of Social Rights, which has a mechanism that allows it to consider complaints from bodies, such as trade unions and non-governmental organisations, but not individuals.

The UK has not accepted this mechanism, and UK bodies may not take complaints to the Committee. However, the UK's compliance with the Charter is examined by the Committee and recommendations are issued. In addition, the Committee's judgments in other countries give important human rights guidance to ombudsman schemes.

## Charter of Fundamental Rights of the European Union

The [Charter of Fundamental Rights of the European Union](#) brings together the fundamental rights of everyone living in the European Union (EU), covering a wide array of both civil and political, and social and economic rights.

Although some of its human rights provisions overlap with the European Convention on Human Rights (ECHR), it operates in a different legal framework. The Charter is interpreted by the Court of Justice of the European Union, while the ECHR is interpreted by the European Court of Human Rights.

Unlike the ECHR, the Charter only applies domestically on matters of EU law. The Charter has supremacy over inconsistent domestic law or decisions of public authorities, and UK courts may rule it has primacy when home legislation infringes on its provisions.

The Charter can be used by courts to interpret EU law and domestic measures implementing EU laws in cases where the meaning of a provision is unclear.

Read about [Brexit and the Charter of Fundamental Rights](#).

## Human Rights Act 1998

The [Human Rights Act 1998](#) sets out the fundamental rights and freedoms that everyone in the UK is entitled to. It incorporates the rights set out in the European Convention on Human Rights (ECHR) into domestic UK law. The Human Rights Act came into force in the UK in October 2000. It requires public authorities and all organisations carrying out public functions to respect and protect the human rights set out in the Act.

The Act means that if these human rights have been breached, you can take your case to a UK court rather than having to seek justice from the European Court of Human Rights in Strasbourg, France.

### The UK courts and ombudsman schemes

The availability of the courts does not diminish the role of ombudsman schemes in investigating and commenting on complaints about an organisation's regard for human rights.

While courts are concerned with the outcome for an individual, ombudsman schemes are concerned with the decision-making processes and the impact of decisions on an individual. As such, ombudsman schemes complement the role of the courts.

Organisations also stand to benefit from the work of ombudsmen, because if their processes and procedures are found to respect and protect human rights, the courts are less likely to find that a violation of those rights has happened.

Many cases that come before ombudsman schemes could be dealt with in the UK courts, including those with human rights concerns. Case handlers should consider what remedy the complainant wants and how reasonable it is for them to take the matter to court, particularly in terms of cost, time and the accessibility of the legal process.

### [Incompatible legislation](#)

When introducing primary or secondary legislation, ministers must make a declaration that it is compatible with the Human Rights Act. However, some legal cases have found that new legislation has led to human rights breaches, meaning it does not fit with the requirements of the Act.

A UK court can only ask a public authority to set aside or ignore an incompatible law if it is secondary legislation. For primary legislation, such as an Act of Parliament, a court can make a 'declaration of incompatibility', and ask that the government amend or repeal the law.

### **Categories of rights**

There are three categories of human rights:

- **absolute** rights can never be limited or interfered with whatever the circumstances
- **limited** rights can be limited in special circumstances, such as war or national emergency, usually stated in the legal text
- **qualified** rights can be interfered with lawfully in certain circumstances, such as protecting the rights of others or because of public interest, as long as it is:
  - to pursue a legitimate aim
  - necessary in a democratic society
  - proportionate

### **Why are categories of rights important?**

The category of a right helps ombudsmen understand the nature of the complaint, choose an appropriate remedy, and make referrals to other authorities if necessary.

A breach of a human right which would be a civil matter, may in addition amount to a criminal offence. This is more likely to be the case with absolute rights, although there is no hierarchy of rights. If an investigation finds that an absolute right has not been sufficiently considered by a public authority there are likely to be public interest reasons for a more rigorous follow-up to ensure recommendations are acted upon.

For qualified rights, case handlers may need to show how an organisation balanced competing interests and ensured a proportionate response.

## **The UK's obligations**

Human rights impose a range of obligations on states. This includes negative obligations, which mean that the state and its public bodies must respect and not interfere with an individual's rights, as well as positive obligations to take action to protect and fulfil human rights.

The UK's obligations are set out in the applicable human rights frameworks at domestic, regional and international level, as described above. Its public bodies must abide by the HRA, and by extension the ECHR, and individuals can seek redress against breaches in the domestic courts or European Court of Human Rights. States must observe international treaties too, but cannot be held to account by individuals in the same way.

## **Respect, protect and fulfil**

### **Respect**

The UK and its authorities must respect human rights and not violate them. For example, they must ensure prison officers do not torture prisoners.

### **Protect**

The UK and its authorities must protect human rights by preventing third parties from interfering with an individual's rights. They must ensure there is a legal framework in place so that interfering third parties are subject to sanction or censure through criminal or civil law.

### **Fulfil**

The UK and its authorities must undertake positive action for the betterment of people's rights. This could be done through public awareness campaigns, education, and by providing resources to prevent human rights breaches.

## Progressive realisation

The legal requirement of progressive realisation obliges states to take appropriate measures towards fulfilling economic, social and cultural rights to the maximum of their available resources.

It applies to rights including:

- the right to health
- the right to an adequate standard of living
- the right to social security

The concept recognises that a lack of resources can be an obstacle to the fulfilment of these rights, but does not excuse the state or public bodies from their obligations. Instead, it requires that they realise these rights over time, with their compliance assessed in light of their available resources. This also requires efforts to mobilise resources (for example, through taxation).

States must also avoid deliberate regression of human rights protection. For example, reducing spending on education, healthcare, or other social services can be a violation of human rights if people are deprived of rights they once had, unless the state can show it is unavoidable, temporary, non-discriminatory and does not undercut the minimum essential levels of human rights. The criteria for retrogression apply narrowly and have been set out by the UN.

## Incompatible laws

Although unlikely, an organisation may have to breach a person's human rights because it has to obey another law. This law would, therefore, be incompatible with the requirements of human rights law.

If this happens, the organisation should still be able to demonstrate its regard for the human rights of the person concerned and provide evidence that the legislation was the obstacle to upholding human rights.

## What to do if your case involves incompatible laws

Ombudsmen in this situation could consider:

- referring the complainant to the courts to seek a [declaration of incompatibility](#) where the breach is of a right in the ECHR

- referring the complainant to the [petition mechanism](#) of the appropriate UN committee
- referring the matter directly to the relevant treaty monitoring body of the [UN](#) or [Council of Europe](#)
- referring the matter to the government minister responsible for the legislation

## Further information

Interpretation of human rights law is constantly evolving and ombudsmen should be aware of any changes. You can check the most up-to-date information by going to the following websites:

- [UN Office of the High Commissioner for Human Rights](#) and its [search facility](#)
- [UN human rights information and recommendations for the UK](#)
- [Council of Europe](#)
- [European Court of Human Rights](#) (including [recent judgments](#) and [decisions](#))
- [British and Irish Legal Information Institute](#) (BAILII), for case law from the UK courts